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9 UNITED STATES BANKRUPTCY COURT

10 EASTERN DISTRICT OF CALIFORNIA

11 SACRAMENTO DIVISION

12 IN RE:

13) Case No: 14-24983-E-13C

14) DCN: DPC-1

15)

16 DAVID SEAN CARROLL,) TRUSTEE'S OBJECTION TO
17) CONFIRMATION

18)

19) DATE: AUGUST 5, 2014

20) TIME: 3:00 P.M.

21) JUDGE: SARGIS

22 Debtor(s)) COURTROOM: 33

23 DAVID P. CUSICK, TRUSTEE, objects to confirmation of the Debtor(s) plan and does
not recommend its confirmation.

24 The Trustee objects to confirmation as:

25 1. **FAILURE TO APPEAR:** The Debtor failed to appear and be examined at the

26 First Meeting of Creditors held on June 26, 2014. The Trustee does not have sufficient

1 information to determine if the plan is suitable for confirmation under 11 U.S.C. §1325. The
2 meeting has been continued to July 24, 2014 at 10:30 am.

3 2. **TAX RETURN NOT PROVIDED:** Debtor has failed to provide the Trustee
4 with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most
5 recent pre-petition tax year for which a return was required, or a written statement that no such
6 documentation exists, see 11 U.S.C. §521(e)(2)(A); FRBP 4002(b)(3). This is required **7 days**
7
8 **before** the date set for the first meeting of creditors, 11 U.S.C. §521(e)(2)(A)(i).

9 3. **PAY ADVICES NOT PROVIDED:** Debtor has failed to provide the Trustee
10 with 60 days of employer payment advices received prior to the filing of the petition pursuant to
11 11 U.S.C. §521(a)(1)(B)(iv).

12 4. **DELINQUENCY:** Debtor is \$426.00 delinquent in plan payments to the Trustee
13 to date and the next scheduled payment of \$426.00 is due July 25, 2014. The case was filed on
14 May 12, 2014, and the plan in §1.01 calls for payments to be received by the Trustee not later
15 than the 25th day of each month beginning the month after the order for relief under Chapter 13.
16
17 The Debtor has paid \$0 into the plan to date.

18 5. **ATTORNEY FEES:** Debtors plan (court document #10) indicates in section 2.06
19 that Counsel will comply with LBR 2016-1(c) regarding the payment of attorney fees. Debtor
20 has failed to file Rights and Responsibilities of Chapter 13 Debtors and their Attorneys to date.
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22 Debtors plan indicates that a total of \$4,000.00 has been charged in this case, and \$1,000.00 was
23 paid prior to filing. The Disclosure of Compensation of Attorney for Debtor (court document #1,
24 page 5) indicates that \$1,000.00 has been paid and \$0 is due.

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26 6. **FEASIBILITY:** Debtors plan calls for payments of \$426.00 for sixty months.
27
28 Class 1 of Debtors plan proposes to pay the ongoing mortgage payment of \$2,000.00 per month,

1 and mortgage arrears of \$20,000.00 at \$333.33 per month. The plan will not pay the creditors as
 2 proposed. The Class 1 dividends plus Trustee compensation total \$2,430.00 per month.

3 **7. PLAN DEFECTS:** Section 2.15 of the plan fails to indicate the percentage to be
 4 paid to unsecured creditors and the total of unsecured debts. Section 6 of the plan fails to indicate
 5 if additional provisions are appended to the plan.

6 **8. SECURED DEBT NOT PROVIDED FOR:** Debtors plan fails to provide for
 7 the secured debt of American Honda Finance Corporation. This debt is not disclosed in the plan
 8 or schedules. Creditor filed a secured claim for \$2,882.15 secured by a 2014 Honda CRF250R
 9 (see court claim #1). The claim discloses that the debt is for a motorcycle, a 2014 Honda
 10 Crf250r, (Page 4), and the contract was entered into on March 7, 2014, (Page 5.) While
 11 treatment of all secured claims may not be required under 11 U.S.C. §1325(a)(5), failure to
 12 provide the treatment may indicate that Debtor either cannot afford the plan payments because of
 13 additional debts, or that the Debtor wishes to conceal the proposed treatment of a creditor.

14 **9. FAILS LIQUIDATION:** Debtors plan fails the Chapter 7 Liquidation Analysis
 15 under 11 U.S.C. §1325(a)(4). Debtors non-exempt assets total \$300.00 and the plan is silent as to
 16 the percentage to be paid to unsecured creditors. According to Debtors Schedules B and C (court
 17 document #11, pages 4-7), non-exempt equity exists in a checking account of \$200.00, and a
 18 2007 Honda Civic of \$100.00.

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1 10. **DOCUMENTS INCOMPLETE:** Debtors Schedule I (court document #11, page
2 13) indicates that Debtor is employed, however the document fails to list Debtors occupation,
3 and employer name and address, as well as the length of employment. The Statement of
4 Financial Affairs (court document #11, page 20) lists at item #1 "estimated" income for year to
5 date, 2013 and 2012. The form calls for the gross annual amounts, not estimated amounts.
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8 WHEREFORE the movant prays that the Court enter an order denying confirmation of the
9 Debtor(s) plan, and an order dismissing the case if a new plan is not filed within a reasonable
10 time.

11 Dated: JULY 3, 2014


12 NEIL ENMARK, Attorney for Trustee

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